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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 UNITED STATES OF AMERICA,

12 Plaintiff,

Cr. S-91-0037-DFL

13 v.  
14

O R D E R

15 IMRAN AHMED MIR,

16 Defendant.  
17 \_\_\_\_\_/

18 Defendant Imran Ahmed Mir has filed a motion for review and  
19 correction of his sentence pursuant to 18 U.S.C. § 3582(c)(2),  
20 relying on United States v. Booker, 543 U.S. \_\_\_, 125 S.Ct. 738  
21 (2005). However, defendant's claim does not fall within the  
22 conditions enumerated in § 3582 (c)(2), in that he was not

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1 sentenced to a term of imprisonment based on a sentencing range  
2 that was subsequently lowered by the Sentencing Commission.<sup>1</sup>  
3 Defendant's motion is DENIED.

4 IT IS SO ORDERED.

5 Dated: 8/23/2005

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9 DAVID F. LEVI  
United States District Judge

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23 <sup>1</sup> Defendant's motion could be liberally construed as a  
24 motion under 28 U.S.C. § 2255. However, such a motion would  
25 be second or successive, in light of defendant's prior §  
26 2255 motion, which was denied by the court. (9/2/99 Order  
at 4.) Moreover, even were the court to consider the  
substance of the motion, defendant's claim is without merit.  
The new rule announced in Booker does not apply  
retroactively to cases on collateral review. Schardt v.  
Payne, 414 F.3d 1025, 2005 WL 1593468 (9th Cir. 2005).